

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JASON PANZA,

Plaintiff,

vs.

No.: 2:11-cv-15390-PJD-LJM

Hon: Patrick J. Duggan
Mag. Laurie J. Michelson

MICHAEL W. MAY and
FIRSTFLEET, INC.,

Defendants.

ARVIN J. PEARLMAN (P18743)
ELAINE L. LIVINGWAY (P39307)
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DEFENDANTS' RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE

NOW COME Defendants, Michael W. May and FirstFleet, Inc., by and through their attorneys, Plunkett Cooney, and for their Response to the Court's Order to Show Cause, state as follows:

1. This is a personal injury action resulting from a motor vehicle accident that occurred on October 6, 2009 on Gibraltar Road in Flat Rock, MI involving Plaintiff's 2000 Chevrolet Blazer and Defendants' tractor-trailer.

2. On December 8, 2011, Defendants removed this case to federal court and on December 16, 2011, this Honorable Court requested the Defendants show cause as

to why this case should not be remanded back to state court for lack of subject matter jurisdiction in the U.S. District Court.

3. As requested by the Court's Order, the Defendants will focus on whether the amount in controversy exceeds the required jurisdictional amount of \$75,000.00.

4. Plaintiff's Complaint seeks both economic and non-economic damages for a left shoulder injury that was allegedly caused by the subject incident.

5. Plaintiff's counsel recently provided selected medical records to defense counsel that reflect Plaintiff has been treating with Dr. Mark Sherrard, a family practitioner, and Dr. Jerome Ciullo, an orthopedic surgeon, for his alleged left shoulder injury.

6. Apparently, Dr. Mark Sherrard referred Plaintiff to Dr. Jerome Ciullo and on November 9, 2010, Dr. Jerome Ciullo diagnosed Plaintiff's left shoulder with the following:

- Subacromial impingement
- Superior labrum anterior and posterior (SLAP) lesion
- Acromioclavicular joint (A/C) arthritis (Exhibit A, Dr. Jerome Ciullo's letter to Dr. Mark Sherrard dated November 9, 2010)

7. On January 14, 2011, Dr. Jerome Ciullo performed surgery on Plaintiff's left shoulder. (Exhibit B, Dr. Jerome Ciullo's Operative Summary dated January 14, 2011)

8. On November 1, 2011, Dr. Jerome Ciullo noted that the top part of the left shoulder was repaired; however, the seam at the bottom is torn further and this is a progression of the same problem and it will not get better by itself and that a *second surgery* is warranted. (Exhibit C, Dr. Jerome Ciullo's Office Note dated November 1, 2011)

9. Medical records reflect that Plaintiff is employed as a Signal Maintainer and his job duties require him to climb, lift, dig and pull. (Exhibit A, Dr. Jerome Ciullo's letter to Dr. Mark Sherrard dated November 9, 2010)

10. On October 6, 2011, Dr. Jerome Ciullo wrote a RTW/Disability Certificate with limitations for Plaintiff's job. (Exhibit D, Dr. Jerome Ciullo's Disability Certificate dated October 6, 2011)

11. Plaintiff's counsel furnished the attached medical records in support of his claim that the amount in controversy exceeds the required jurisdictional amount of \$75,000.00.

12. Defendants reserve the right to contest negligence, proximate cause and damages.

For these reasons, Defendants removed this case to federal court pursuant to 28 U.S.C.A. §§ 1332, 1441 and 1446 and respectfully requests this Honorable Court retain jurisdiction of this litigation based on diversity.

Respectfully submitted,

PLUNKETT COONEY

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CERTIFICATE OF SERVICE

I certify that on the 6th day of January, 2012, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to each counsel of record so registered with the United States District Court, and I served via U.S. Mail any counsel and/or parties in proper not registered to receive electronic copies from the court, by enclosing same in a sealed envelope with first class postage fully prepaid affixed thereon, addressed to such non-ECF participants at the address on record with this court, and depositing said envelope and its contents in a receptacle for the US Mail.

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